

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JEFFREY S. FRANKS,	)	
	)	
Plaintiff,	)	4:10CV3145
	)	
v.	)	
	)	
STATE OF NEBRASKA,	)	MEMORANDUM AND ORDER
	)	
Defendant.	)	

The defendant has moved for an order compelling plaintiff to provide complete Answers to Defendant's First Set of Interrogatories under oath and complete Responses to Defendant's First Set of Requests for Production of Documents. (Filing No. 21). The defendant further requests recover of the attorney fees and costs it incurred in filing the motion to compel.

The plaintiff has not responded to the motion, and the deadline for responding has passed. The motion is therefore deemed fully submitted.

After reviewing the evidence of record, the court finds the defendant's motion should be granted. The court further finds the defendant attempted in good faith to resolve this discovery dispute before filing a motion to compel, the plaintiff's failure to fully respond to discovery at issue on defendant's motion to compel was not substantially justified, and an award of attorney fees in favor of the defendant is warranted.

Accordingly,

IT IS ORDERED:

- 1) Defendant's motion to compel, (filing no. 21), is granted.
- 2) On or before July 11, 2011, the plaintiff shall provide or produce:

- a. Full and complete answers to defendant's Interrogatory Nos. 2, 3, 5, and 6.
  - b. A complete set of Interrogatory answers signed under oath by the plaintiff.
  - c. A full and complete response to Request for Production Nos. 1 and 6, along with a statement, signed under oath, affirming that all responsive documents have been disclosed.
- 3) The plaintiff is hereby notified that absent plaintiff's complete and timely compliance with paragraph (2) of this order, his case may be dismissed for want of prosecution.
- 4) As to defendant's request for attorney fees:
- a. On or before July 8, 2011, the parties shall confer and in good faith attempt to resolve defendant's request for the attorney fees and costs incurred in filing its motion to compel.
  - b. If an agreement is not reached on the attorney fee and cost issue, and the defendant wishes to pursue the claim, the defendant shall submit its evidence (see NECivR 54.1, 54.3, and 54.4) and supporting brief for taxation of costs and attorney fees by July 15, 2011, in the absence of which this claim will be deemed abandoned.
  - c. Any response to defendant's request for attorneys fees and costs shall be filed on or before July 18, 2011.
  - d. No reply shall be granted absent leave of the court for good cause shown.

DATED this 27th day of June, 2011.

BY THE COURT:

s/ Cheryl R. Zwart  
United States Magistrate Judge